



Rep. William Davis

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LRB098 08840 HEP 42462 a

1 AMENDMENT TO HOUSE BILL 2339

2 AMENDMENT NO. _____. Amend House Bill 2339 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Anatomical Gift Act is amended by
5 changing Sections 1-5, 1-10, 5-5, 5-15, 5-20, 5-25, 5-27, 5-35,
6 5-45, and 5-50 and by adding Sections 5-7, 5-12, 5-42, 5-43,
7 5-47, and 5-55 as follows:

8 (755 ILCS 50/1-5)

9 Sec. 1-5. Purpose. Illinois recognizes that there is a
10 critical shortage of human organs and tissues available to
11 citizens in need of organ and tissue transplants. This shortage
12 leads to the untimely death of many adults and children in
13 Illinois and across the nation each year. This Act is intended
14 to implement the public policy of encouraging timely donation
15 of human organs and tissue in Illinois, ~~and~~ facilitating
16 transplantation ~~transplants~~ of those organs and tissue into

1 patients in need of them, and encouraging anatomical gifts for
2 therapy, research, or education. Through this Act, laws
3 relating to organ and tissue donation and transplantation are
4 consolidated and modified for the purpose of furthering this
5 public policy, and for the purpose of establishing consistency
6 between this Act and the core provisions of the Revised Uniform
7 Anatomical Gift Act of 2006.

8 (Source: P.A. 93-794, eff. 7-22-04.)

9 (755 ILCS 50/1-10) (was 755 ILCS 50/2)

10 Sec. 1-10. Definitions.

11 ~~"Bank or storage facility" means a facility licensed,~~
12 ~~accredited or approved under the laws of any state for storage~~
13 ~~of human bodies or parts thereof.~~

14 "Close friend" means any person 18 years of age or older
15 who has exhibited special care and concern for the decedent and
16 who presents an affidavit to the decedent's attending
17 physician, or the hospital administrator or his or her
18 designated representative, stating that he or she (i) was a
19 close friend of the decedent, (ii) is willing and able to
20 consent to the donation, and (iii) maintained such regular
21 contact with the decedent as to be familiar with the decedent's
22 health and social history, and religious and moral beliefs. The
23 affidavit must also state facts and circumstances that
24 demonstrate that familiarity.

25 "Death" means, for the purposes of the Act, when, according

1 to accepted medical standards, there is (i) an irreversible
2 cessation of circulatory and respiratory functions; or (ii) an
3 irreversible cessation of all functions of the entire brain,
4 including the brain stem ~~the irreversible cessation of total~~
5 ~~brain function, according to usual and customary standards of~~
6 ~~medical practice.~~

7 "Decedent" means a deceased individual and includes a
8 stillborn infant or fetus.

9 "Disinterested witness" means a witness other than the
10 spouse, child, parent, sibling, grandchild, grandparent, or
11 guardian of the individual who makes, amends, revokes, or
12 refuses to make an anatomical gift, or another adult who
13 exhibited special care and concern for the individual. The term
14 does not include a person to whom an anatomical gift could pass
15 under Section 5-10 of this Act.

16 "Document of Gift" means a donor card or other record used
17 to make an anatomical gift. The term includes a donor registry.

18 "Donor" means an individual whose body or part is the
19 subject of an anatomical gift. ~~who makes a gift of all or parts~~
20 ~~of his body.~~

21 ~~"Federally designated organ procurement agency" means the~~
22 ~~organ procurement agency designated by the Secretary of the~~
23 ~~U.S. Department of Health and Human Services for the service~~
24 ~~area in which a hospital is located, or the organ procurement~~
25 ~~agency for which the U.S. Secretary of Health and Human~~
26 ~~Services has granted the hospital a waiver pursuant to 42~~

1 ~~U.S.C. 1320b-8(a).~~

2 "Hospital" means a hospital licensed, accredited or
3 approved under the laws of any state; and includes a hospital
4 operated by the United States government, a state, or a
5 subdivision thereof, although not required to be licensed under
6 state laws.

7 "Non-transplant anatomic bank" means any facility or
8 program operating or providing services in this State that is
9 accredited by the American Association of Tissue Banks and that
10 is involved in procuring, furnishing, or distributing whole
11 bodies or parts for the purpose of medical education. For
12 purposes of this Section, a non-transplant anatomic bank
13 operating under the auspices of a hospital, accredited medical
14 school, dental school, college or university, or federally
15 designated organ procurement organization is not required to be
16 accredited by the American Association of Tissue Banks.

17 ~~"Not available" for the giving of consent or refusal means:~~
18 ~~(1) the existence of the person is unknown to the hospital~~
19 ~~administrator or designee, organ procurement agency, or tissue~~
20 ~~bank and is not readily ascertainable through the examination~~
21 ~~of the decedent's hospital records and the questioning of any~~
22 ~~persons who are available for giving consent;~~

23 ~~(2) the administrator or designee, organ procurement~~
24 ~~agency, or tissue bank has unsuccessfully attempted to contact~~
25 ~~the person by telephone or in any other reasonable manner; or~~

26 ~~(3) the person is unable or unwilling to respond in a~~

1 ~~manner that indicates the person's refusal or consent.~~

2 "Organ" means a human kidney, liver, heart, lung, pancreas,
3 small bowel, or other transplantable vascular body part as
4 determined by the Organ Procurement and Transplantation
5 Network, as periodically selected by the U.S. Department of
6 Health and Human Services.

7 "Organ procurement organization" means the organ
8 procurement organization designated by the Secretary of the
9 U.S. Department of Health and Human Services for the service
10 area in which a hospital is located, or the organ procurement
11 organization for which the Secretary of the U.S. Department of
12 Health and Human Services has granted the hospital a waiver
13 pursuant to 42 U.S.C. 1320b-8(a).

14 "Procurement organization" means an organ procurement
15 organization or a tissue bank.

16 "Reasonably available for the giving of consent or refusal"
17 means a person who is able to be contacted by a procurement
18 organization without undue effort and who is willing and able
19 to act in a timely manner consistent with existing medical
20 criteria necessary for the making of an anatomical gift.

21 "Tissue" means eyes, bones, heart valves, veins, skin, and
22 any other portions of a human body excluding blood, blood
23 products or organs.

24 "Part" means organs, tissues, eyes, bones, arteries,
25 blood, other fluids and any other portions of a human body.

26 "Person" means an individual, corporation, government or

1 governmental subdivision or agency, business trust, estate,
2 trust, partnership or association or any other legal entity.

3 "Physician" or "surgeon" means a physician or surgeon
4 licensed or authorized to practice medicine in all of its
5 branches under the laws of any state.

6 "State" includes any state, district, commonwealth,
7 territory, insular possession, and any other area subject to
8 the legislative authority of the United States of America.

9 "Technician" means an individual trained and certified to
10 remove tissue, by a recognized medical training institution in
11 the State of Illinois.

12 "Tissue bank" means any facility or program operating in
13 Illinois that is accredited ~~certified~~ by the American
14 Association of Tissue Banks, the Eye Bank Association of
15 America, or the Association of Organ Procurement Organizations
16 and is involved in procuring, furnishing, donating, or
17 distributing corneas, bones, or other human tissue for the
18 purpose of injecting, transfusing, or transplanting any of them
19 into the human body, or for research or education. "Tissue
20 bank" does not include a licensed blood bank. For the purposes
21 of this Act, "tissue" does not include organs or blood or blood
22 products.

23 (Source: P.A. 93-794, eff. 7-22-04.)

24 (755 ILCS 50/5-5) (was 755 ILCS 50/3)

25 Sec. 5-5. Persons who may execute an anatomical gift.

1 (a) An anatomical gift of a donor's body or part may be
2 made during the life of the donor for the purpose of
3 transplantation, therapy, research, or education by:

4 (1) the donor, if the donor is an adult or if the donor
5 is an emancipated minor;

6 (2) an agent of the donor, unless the power of attorney
7 for health care or other record prohibits the agent from
8 making an anatomical gift;

9 (3) a parent of the donor, if the donor is an
10 unemancipated minor; or

11 (4) the donor's guardian.

12 ~~Any individual of sound mind who has attained the age of 18~~
13 ~~may give all or any part of his or her body for any purpose~~
14 ~~specified in Section 5-10. Such a gift may be executed in any~~
15 ~~of the ways set out in Section 5-20, and shall take effect upon~~
16 ~~the individual's death without the need to obtain the consent~~
17 ~~of any survivor. An anatomical gift made by an agent of an~~
18 ~~individual, as authorized by the individual under the Powers of~~
19 ~~Attorney for Health Care Law, as now or hereafter amended, is~~
20 ~~deemed to be a gift by that individual and takes effect without~~
21 ~~the need to obtain the consent of any other person.~~

22 (b) If no gift has been executed under subsection (a), an
23 anatomical gift of a decedent's body or part for the purpose of
24 transplantation, therapy, research, or education may be made at
25 the time of the decedent's death, or when death is imminent, by
26 a member of the following classes of persons who is reasonably

1 available for the giving of consent or refusal, in the order of
2 priority listed ~~any of the following persons, in the order of~~
3 ~~priority stated in items (1) through (11) below,~~ when persons
4 in prior classes are not available for the giving of consent or
5 refusal and in the absence of ~~(i)~~ actual notice of contrary
6 intentions by the decedent and ~~(ii)~~ actual notice of opposition
7 by any member within the same priority class, may consent to
8 give all or any part of the decedent's body after or
9 immediately before death to a person who may become a donee for
10 any purpose specified in Section 5-10:

11 (1) the guardian of the person of the decedent;

12 (2) the spouse or civil union partner of the decedent;

13 (3) an adult child of the decedent;

14 (4) a parent of the decedent;

15 (5) an adult sibling of the decedent;

16 (6) an adult grandchild of the decedent;

17 (7) a grandparent of the decedent;

18 (8) a close friend of decedent; and

19 (9) the guardian of the estate of the decedent.

20 ~~(1) an individual acting as the decedent's agent under~~
21 ~~a power of attorney for health care,~~

22 ~~(2) the decedent's surrogate decision maker identified~~
23 ~~by the attending physician in accordance with the Health~~
24 ~~Care Surrogate Act,~~

25 ~~(3) the guardian of the decedent's person at the time~~
26 ~~of death,~~

- 1 ~~(4) the decedent's spouse,~~
2 ~~(5) any of the decedent's adult sons or daughters,~~
3 ~~(6) either of the decedent's parents,~~
4 ~~(7) any of the decedent's adult brothers or sisters,~~
5 ~~(8) any adult grandchild of the decedent,~~
6 ~~(9) a close friend of the decedent,~~
7 ~~(10) the guardian of the decedent's estate,~~
8 ~~(11) any other person authorized or under legal~~
9 ~~obligation to dispose of the body.~~

10 ~~If the donee has actual notice of opposition to the gift by~~
11 ~~the decedent or any person in the highest priority class in~~
12 ~~which an available person can be found, then no gift of all or~~
13 ~~any part of the decedent's body shall be accepted.~~

14 (b-5) If there is more than one member of a class listed in
15 items (1), (3), (4), (5), (6), (7), or (9) of subsection (b) of
16 this Section entitled to make an anatomical gift, an anatomical
17 gift may be made by a member of the class unless that member or
18 a person to which the gift may pass under Section 5-12 of this
19 Act knows of an objection by another member of the class. If an
20 objection is known, the gift may be made only by a majority of
21 the members of the class who are reasonably available for the
22 giving of consent or refusal.

23 (b-10) A person may not make an anatomical gift if, at the
24 time of the decedent's death, a person in a higher priority
25 class under subsection (b) of this Section is reasonably
26 available for the giving of consent or refusal.

1 (c) A gift of all or part of a body authorizes any blood or
2 tissue test or minimally invasive examination necessary to
3 assure medical acceptability of the gift for the purposes
4 intended. The hospital may not withdraw any measures that are
5 necessary to maintain the medical suitability of the part until
6 the procurement organization has had the opportunity to advise
7 the applicable persons as set forth in this Act of the option
8 to make an anatomical gift or has ascertained that the
9 individual expressed a contrary intent. The results of tests
10 and examinations under this subsection shall be used or
11 disclosed only for purposes of evaluating medical suitability
12 for donation, to facilitate the donation process, and as
13 required or permitted by existing law.

14 (d) The rights of the donee created by the gift are
15 paramount to the rights of others except as provided by Section
16 5-45(d).

17 (e) If no gift has been executed under this Act, then no
18 part of the decedent's body may be used for any purpose
19 specified in this Act.

20 (Source: P.A. 92-349, eff. 1-1-02; 93-794, eff. 7-22-04.)

21 (755 ILCS 50/5-7 new)

22 Sec. 5-7. Preclusive effect of anatomical gift, amendment,
23 or revocation.

24 (a) Except as otherwise provided in this Section and
25 subject to subsection (f) of this Section, in the absence of an

1 express, contrary indication by the donor, a person other than
2 the donor is barred from changing, amending, or revoking an
3 anatomical gift of a donor's body or part if the donor made an
4 anatomical gift of the donor's body or part under Section 5-20
5 of this Act or an amendment to an anatomical gift of the
6 donor's body or part under Section 5-42 of this Act.

7 (b) A donor's revocation of an anatomical gift of the
8 donor's body or part under Section 5-42 of this Act is not a
9 refusal and does not bar another person specified in subsection
10 (a) or (b) of Section 5-5 of this Act from making an anatomical
11 gift of the donor's body or part under subsection (a), (b),
12 (b-5), (b-10), (e), or (e-5) of Section 5-20 of this Act.

13 (c) If a person other than the donor makes an unrevoked
14 anatomical gift of the donor's body or part under subsection
15 (a), (b), (b-5) or (b-10) of Section 5-20 of this Act, or an
16 amendment to an anatomical gift of the donor's body or part
17 under Section 5-42 of this Act, another person may not make,
18 amend, or revoke the gift of the donor's body or part under
19 subsection (e) or (e-5) of Section 5-20 of this Act.

20 (d) A revocation of an anatomical gift of a donor's body or
21 part under Section 5-42 of this Act by a person other than the
22 donor does not bar another person from making an anatomical
23 gift of the body or part under subsection (a), (b), (b-5),
24 (b-10), (e), or (e-5) of Section 5-20 of this Act.

25 (e) In the absence of an express, contrary indication by
26 the donor or other person authorized to make an anatomical gift

1 under subsection (a) of Section 5-5 of this Act, an anatomical
2 gift of a part is neither a refusal to give another part nor a
3 limitation on the making of an anatomical gift of another part
4 at a later time by the donor or another person.

5 (f) In the absence of an express, contrary indication by
6 the donor or other person authorized to make an anatomical gift
7 under subsection (a) of Section 5-5 of this Act, an anatomical
8 gift of a part for one or more of the purposes set forth in
9 subsection (a) of Section 5-5 of this Act is not a limitation
10 on the making of an anatomical gift of the part for any of the
11 other purposes by the donor or any other person under
12 subsection (a), (b), (b-5), (b-10), (e), or (e-5) of Section
13 5-20 of this Act.

14 (755 ILCS 50/5-12 new)

15 Sec. 5-12. Persons who may receive an anatomical gift;
16 purpose of anatomical gift.

17 (a) An anatomical gift may be made to the following persons
18 named in the document of gift:

19 (1) for research or education, a hospital; an
20 accredited medical school, dental school, college, or
21 university; an organ procurement organization; or other
22 appropriate person;

23 (2) subject to subsection (b) of this Section, an
24 individual designated by the person making the anatomical
25 gift if the individual is the recipient of the part;

1 (3) an eye bank or tissue bank; or

2 (4) for research or education, a non-transplant
3 anatomic bank.

4 (b) If an anatomical gift to an individual under item (2)
5 of subsection (a) of this Section cannot be transplanted into
6 the individual, the part passes in accordance with subsection
7 (g) of this Section unless there is an express, contrary
8 indication by the person making the anatomical gift.

9 (c) If an anatomical gift of one or more specific parts or
10 of all parts is made in a document of gift that does not name a
11 person described in subsection (a) of this Section, but
12 identifies the purpose for which an anatomical gift may be
13 used, the following rules apply:

14 (1) If the part is an eye and the gift is for the
15 purpose of transplantation or therapy, the gift passes to
16 the appropriate eye bank.

17 (2) If the part is tissue and the gift is for the
18 purpose of transplantation or therapy, the gift passes to
19 the appropriate tissue bank.

20 (3) If the part is an organ and the gift is for the
21 purpose of transplantation or therapy, the gift passes to
22 the appropriate organ procurement organization as
23 custodian of the organ.

24 (4) If the part is an organ, an eye, or tissue and the
25 gift is for the purpose of research or education, the gift
26 passes to the appropriate procurement organization.

1 (d) For the purpose of subsection (c) of this Section, if
2 there is more than one purpose of an anatomical gift set forth
3 in the document of gift but the purposes are not set forth in
4 any priority, and if the gift cannot be used for
5 transplantation or therapy, the gift may be used for research
6 or education.

7 (e) If an anatomical gift of one or more specific parts is
8 made in a document of gift that does not name a person
9 described in subsection (a) of this Section and does not
10 identify the purpose of the gift, the gift may be used only for
11 transplantation or therapy or research, and the gift passes in
12 accordance with subsection (g) of this Section.

13 (f) If a document of gift specifies only a general intent
14 to make an anatomical gift by words such as "donor", "organ
15 donor", or "body donor", or by a symbol or statement of similar
16 import, the gift may be used only for transplantation or
17 therapy or research, and the gift passes in accordance with
18 subsection (g) of this Section.

19 (g) For purposes of subsections (b), (e), and (f) of this
20 Section, the following rules apply:

21 (1) If the part is an eye, the gift passes to the
22 appropriate eye bank.

23 (2) If the part is tissue, the gift passes to the
24 appropriate tissue bank.

25 (3) If the part is an organ, the gift passes to the
26 appropriate organ procurement organization as custodian of

1 the organ.

2 (h) An anatomical gift of an organ for transplantation or
3 therapy, other than an anatomical gift under item (2) of
4 subsection (a) of this Section, passes to the organ procurement
5 organization as custodian of the organ.

6 (i) If an anatomical gift does not pass under this Section
7 or the decedent's body or part is not used for transplantation,
8 therapy, research, or education, custody of the body or part
9 passes to the person under obligation to dispose of the body or
10 part.

11 (j) A person may not accept an anatomical gift if the
12 person knows that the gift was not effectively made under
13 Section 5-5 or subsection (e) or (e-5) of Section 5-20 of this
14 Act or if the person knows that the decedent made a refusal
15 under Section 5-47 of this Act that was not revoked. For
16 purposes of this subsection, if a person knows that an
17 anatomical gift was made on a document of gift, the person is
18 deemed to know of any amendment or revocation of the gift or
19 any refusal to make an anatomical gift on the same document of
20 gift.

21 (k) Except as otherwise provided in item (2) of subsection
22 (a) of this Section, nothing in this Act affects the allocation
23 of organs for transplantation or therapy.

24 (755 ILCS 50/5-15) (was 755 ILCS 50/4.5)

25 Sec. 5-15. Disability of recipient.

1 (a) No hospital, physician and surgeon, procurement
2 organization ~~bank or storage facility~~, or other person shall
3 determine the ultimate recipient of an anatomical gift based
4 upon a potential recipient's physical or mental disability,
5 except to the extent that the physical or mental disability has
6 been found by a physician and surgeon, following a case-by-case
7 evaluation of the potential recipient, to be medically
8 significant to the provision of the anatomical gift.

9 (b) Subsection (a) shall apply to each part of the organ
10 transplant process.

11 (c) The court shall accord priority on its calendar and
12 handle expeditiously any action brought to seek any remedy
13 authorized by law for purposes of enforcing compliance with
14 this Section.

15 (d) This Section shall not be deemed to require referrals
16 or recommendations for or the performance of medically
17 inappropriate organ transplants.

18 (e) As used in this Section "disability" has the same
19 meaning as in the federal Americans with Disabilities Act of
20 1990 (42 U.S.C. 12101 et seq., Public Law 101-336) as may be
21 amended from time to time.

22 (Source: P.A. 93-794, eff. 7-22-04.)

23 (755 ILCS 50/5-20) (was 755 ILCS 50/5)

24 Sec. 5-20. Manner of Executing Anatomical Gifts.

25 (a) A donor may make an anatomical gift:

1 (1) by authorizing a statement or symbol indicating
2 that the donor has made an anatomical gift to be imprinted
3 on the donor's driver's license or identification card;

4 (2) in a will;

5 (3) during a terminal illness or injury of the donor,
6 by any form of communication addressed to at least 2
7 adults, at least one of whom is a disinterested witness; or

8 (4) as provided in subsection (b) of this Section.

9 ~~A gift of all or part of the body under Section 5-5 (a) may~~
10 ~~be made by will. The gift becomes effective upon the death of~~
11 ~~the testator without waiting for probate. If the will is not~~
12 ~~probated, or if it is declared invalid for testamentary~~
13 ~~purposes, the gift, to the extent that it has been acted upon~~
14 ~~in good faith, is nevertheless valid and effective.~~

15 (b) A donor or other person authorized to make an
16 anatomical gift under subsection (a) of Section 5-5 of this Act
17 may make a gift by a donor card or other record signed by the
18 donor or other person making the gift or by authorizing that a
19 statement or symbol indicating that the donor has made an
20 anatomical gift be included on a donor registry. If the donor
21 or other person is physically unable to sign a record, the
22 record may be signed by another individual at the direction of
23 the donor or other person and must:

24 (1) be witnessed by at least 2 adults, at least one of
25 whom is a disinterested witness, who have signed at the
26 request of the donor or the other person; and

1 (2) state that it has been signed and witnessed as
2 provided in paragraph (1) of this subsection (b).

3 ~~A gift of all or part of the body under Section 5-5 (a) may~~
4 ~~also be made by a written, signed document other than a will.~~
5 ~~The gift becomes effective upon the death of the donor. The~~
6 ~~document, which may be a card or a valid driver's license~~
7 ~~designed to be carried on the person, is effective without~~
8 ~~regard to the presence or signature of witnesses. Such a gift~~
9 ~~may also be made by properly executing the form provided by the~~
10 ~~Secretary of State on the reverse side of the donor's driver's~~
11 ~~license pursuant to subsection (b) of Section 6-110 of The~~
12 ~~Illinois Vehicle Code. Delivery of the document of gift during~~
13 ~~the donor's lifetime is not necessary to make the gift valid.~~

14 (b-1) A gift under Section 5-5 (a) may also be made by an
15 individual consenting to have his or her name included in the
16 First Person Consent organ and tissue donor registry maintained
17 by the Secretary of State under Section 6-117 of the Illinois
18 Vehicle Code. An individual's consent to have his or her name
19 included in the First Person Consent organ and tissue donor
20 registry constitutes full legal authority for the donation of
21 any of his or her organs or tissue for purposes of
22 transplantation, therapy, or research. Consenting to be
23 included in the First Person Consent organ and tissue donor
24 registry is effective without regard to the presence or
25 signature of witnesses.

26 (b-5) Revocation, suspension, expiration, or cancellation

1 of a driver's license or identification card upon which an
2 anatomical gift is indicated does not invalidate the gift.

3 (b-10) An anatomical gift made by will takes effect upon
4 the donor's death whether or not the will is probated.
5 Invalidation of the will after the donor's death does not
6 invalidate the gift.

7 (c) The anatomical gift may be made to a specified donee or
8 without specifying a donee. ~~If the latter, the gift may be~~
9 ~~accepted by the attending physician as donee upon or following~~
10 ~~death.~~ If the gift is made to a specified donee who is not
11 available at the time and place of death, then if made for the
12 purpose of transplantation, it shall be effectuated in
13 accordance with Section 5-25, ~~and if made for any other purpose~~
14 ~~the attending physician upon or following death, in the absence~~
15 ~~of any expressed indication that the donor desired otherwise,~~
16 ~~may accept the gift as donee.~~

17 (d) The donee or other person authorized to accept the gift
18 may employ or authorize any qualified technician, surgeon, or
19 physician to perform the recovery. ~~Notwithstanding Section~~
20 ~~5-45 (b), the donor may designate in his will, card, or other~~
21 ~~document of gift the surgeon or physician to carry out the~~
22 ~~appropriate procedures. In the absence of a designation or if~~
23 ~~the designee is not available, the donee or other person~~
24 ~~authorized to accept the gift may employ or authorize any~~
25 ~~surgeon or physician for the purpose.~~

26 (e) A person authorized to make an anatomical gift under

1 subsection (b) of Section 5-5 of this Act may make an
2 anatomical gift by a document of gift signed by the person
3 making the gift or by that person's oral communication that is
4 electronically recorded or is contemporaneously reduced to a
5 record and signed by the individual receiving the oral
6 communication. ~~Any gift by a person designated in Section 5-5~~
7 ~~(b) shall be made by a document signed by him or made by his~~
8 ~~telegraphic, recorded telephonic, or other recorded message.~~

9 (e-5) An anatomical gift by a person authorized under
10 subsection (b) of Section 5-5 of this Act may be amended or
11 revoked orally or in a record by a member of a prior class who
12 is reasonably available for the giving of consent or refusal.
13 If more than one member of the prior class is reasonably
14 available for the giving of consent or refusal, the gift made
15 by a person authorized under subsection (b) of Section 5-5 of
16 this Act may be:

17 (1) amended only if a majority of the class members
18 reasonably available for the giving of consent or refusal
19 agree to the amending of the gift; or

20 (2) revoked only if a majority of the class members
21 reasonably available for the giving of consent or refusal
22 agree to the revoking of the gift or if they are equally
23 divided as to whether to revoke the gift.

24 (e-10) A revocation under subsection (e-5) is effective
25 only if, before an incision has been made to remove a part from
26 the donor's body or before invasive procedures have been

1 commenced to prepare the recipient, the procurement
2 organization, non-transplant anatomic bank, transplant
3 hospital, or physician or technician knows of the revocation.

4 (f) When there is a suitable candidate for organ donation
5 and a donation or consent to donate has not yet been given,
6 procedures to preserve the decedent's body for possible organ
7 and tissue donation may be implemented under the authorization
8 of the applicable organ procurement organization ~~agency~~, at its
9 own expense, prior to making a donation request pursuant to
10 Section 5-25. If the organ procurement organization ~~agency~~ does
11 not locate a person authorized to consent to donation or
12 consent to donation is denied, then procedures to preserve the
13 decedent's body shall be ceased and no donation shall be made.
14 The organ procurement organization ~~agency~~ shall respect the
15 religious tenets of the decedent, if known, such as a pause
16 after death, before initiating preservation services. Nothing
17 in this Section shall be construed to authorize interference
18 with the coroner in carrying out an investigation or autopsy.

19 (Source: P.A. 93-794, eff. 7-22-04; 94-75, eff. 1-1-06; 94-920,
20 eff. 1-1-07.)

21 (755 ILCS 50/5-25)

22 Sec. 5-25. Notification; consent.

23 (a) Each hospital in this State shall enter into agreements
24 or affiliations with procurement organizations for
25 coordination of procurement and use of anatomical gifts. ~~When,~~

1 ~~based upon generally accepted medical standards, an inpatient~~
2 ~~in a general acute care hospital with more than 100 beds is a~~
3 ~~suitable candidate for organ or tissue donation and the patient~~
4 ~~has not made an anatomical gift of all or any part of his or her~~
5 ~~body pursuant to Section 5-20 of this Act, the hospital~~

6 (b) Hospitals shall proceed in accordance with the
7 applicable requirements of 42 CFR 482.45 or any successor
8 provisions of federal statute or regulation, as may be amended
9 from time to time, with regard to collaboration with
10 procurement organizations to facilitate organ, tissue, and eye
11 donation and the ~~written agreement between the hospital and the~~
12 ~~applicable organ procurement agency executed thereunder.~~

13 ~~(b)~~ In making a request for organ or tissue donation, the
14 hospital or the hospital's federally designated organ
15 procurement agency or tissue bank shall request any of the
16 ~~following~~ persons, in the order of priority stated in items (1)
17 through (9) ~~(11)~~ below, when persons in prior classes are not
18 available and in the absence of (i) actual notice of contrary
19 intentions by the decedent, (ii) actual notice of opposition by
20 any member within the same priority class, and (iii) reason to
21 believe that an anatomical gift is contrary to the decedent's
22 religious beliefs, to consent to the gift of all or any part of
23 the decedent's body for any purpose specified in Section 5-12
24 ~~5-10~~ of this Act:

25 (1) the guardian of the person of the decedent;

26 (2) the spouse or civil union partner of the decedent;

1 (3) an adult child of the decedent;

2 (4) a parent of the decedent;

3 (5) an adult sibling of the decedent;

4 (6) an adult grandchild of the decedent;

5 (7) a grandparent of the decedent;

6 (8) a close friend of decedent; and

7 (9) the guardian of the estate of the decedent.

8 ~~(1) an individual acting as the decedent's agent under~~
9 ~~a power of attorney for health care;~~

10 ~~(2) the decedent's surrogate decision maker identified~~
11 ~~by the attending physician in accordance with the Health~~
12 ~~Care Surrogate Act;~~

13 ~~(3) the guardian of the decedent's person at the time~~
14 ~~of death;~~

15 ~~(4) the decedent's spouse;~~

16 ~~(5) any of the decedent's adult sons or daughters;~~

17 ~~(6) either of the decedent's parents;~~

18 ~~(7) any of the decedent's adult brothers or sisters;~~

19 ~~(8) any adult grandchild of the decedent;~~

20 ~~(9) a close friend of the decedent;~~

21 ~~(10) the guardian of the decedent's estate; or~~

22 ~~(11) any other person authorized or under legal~~
23 ~~obligation to dispose of the body.~~

24 (c) (Blank). ~~If (1) the hospital, the applicable organ~~
25 ~~procurement agency, or the tissue bank has actual notice of~~
26 ~~opposition to the gift by the decedent or any person in the~~

1 ~~highest priority class in which an available person can be~~
2 ~~found, or (2) there is reason to believe that an anatomical~~
3 ~~gift is contrary to the decedent's religious beliefs, or (3)~~
4 ~~the Director of Public Health has adopted a rule signifying his~~
5 ~~or her determination that the need for organs and tissues for~~
6 ~~donation has been adequately met, then the gift of all or any~~
7 ~~part of the decedent's body shall not be requested. If a~~
8 ~~donation is requested, consent or refusal may be obtained only~~
9 ~~from the person or persons in the highest priority class~~
10 ~~available. If the hospital administrator, or his or her~~
11 ~~designated representative, the designated organ procurement~~
12 ~~agency, or the tissue bank is unable to obtain consent from any~~
13 ~~of the persons named in items (1) through (11) of subsection~~
14 ~~(b) of this Section, the decedent's body shall not be used for~~
15 ~~an anatomical gift unless a valid anatomical gift document was~~
16 ~~executed under this Act.~~

17 (d) (Blank). ~~When there is a suitable candidate for organ~~
18 ~~donation, as described in subsection (a), or if consent to~~
19 ~~remove organs and tissues is granted, the hospital shall notify~~
20 ~~the applicable federally designated organ procurement agency.~~
21 ~~The federally designated organ procurement agency shall notify~~
22 ~~any tissue bank specified by the hospital of the suitable~~
23 ~~candidate for tissue donation. The organ procurement agency~~
24 ~~shall collaborate with all tissue banks in Illinois to maximize~~
25 ~~tissue procurement in a timely manner.~~

26 (Source: P.A. 93-794, eff. 7-22-04.)

1 (755 ILCS 50/5-27) (was 755 ILCS 60/3.5)

2 Sec. 5-27. Notification of patient; family rights and
3 options after circulatory death.

4 (a) In this Section, "donation after circulatory ~~cardiac~~
5 death" means the donation of organs from a ~~ventilated~~ patient
6 whose death is declared based upon cardio-pulmonary, and not
7 neurological, criteria, following the implementation of the
8 decision to withdraw life support ~~without a certification of~~
9 ~~brain death and with a do not resuscitate order, if a decision~~
10 ~~has been reached by the physician and the family to withdraw~~
11 ~~life support and if the donation does not occur until after the~~
12 ~~declaration of cardiac death.~~

13 (b) If (i) a potential organ donor, or an individual given
14 authority under subsection (b) of Section 5-25 to consent to an
15 organ donation, expresses an interest in organ donation, (ii)
16 there has not been a certification of brain death for the
17 potential donor, and (iii) the potential donor is a patient at
18 a hospital that does not allow donation after circulatory
19 ~~cardiac~~ death, then the organ procurement organization ~~agency~~
20 shall inform the patient or the individual given authority to
21 consent to organ donation that the hospital does not allow
22 donation after circulatory ~~cardiac~~ death.

23 (c) In addition to providing oral notification, the organ
24 procurement agency shall develop a written form that indicates
25 to the patient or the individual given authority to consent to

1 organ donation, at a minimum, the following information:

2 (1) That the patient or the individual given authority
3 to consent to organ donation has received literature and
4 has been counseled by (representative's name) of the (organ
5 procurement agency name).

6 (2) That all organ donation options have been explained
7 to the patient or the individual given authority to consent
8 to organ donation, including the option of donation after
9 circulatory ~~cardiac~~ death.

10 (3) That the patient or the individual given authority
11 to consent to organ donation is aware that the hospital
12 where the potential donor is a patient does not allow
13 donation after circulatory ~~cardiac~~ death.

14 (4) That the patient or the individual given authority
15 to consent to organ donation has been informed of the right
16 to request a patient transfer to a facility allowing
17 donation after circulatory ~~cardiac~~ death.

18 (5) That the patient or the individual given authority
19 to consent to organ donation has been informed of another
20 hospital that will allow donation after cardiac death and
21 will accept a patient transfer for the purpose of donation
22 after circulatory ~~cardiac~~ death; and that the cost of
23 transferring the patient to that other hospital will be
24 covered by the organ procurement organization ~~agency~~, with
25 no additional cost to the patient or the individual given
26 authority to consent to organ donation.

1 The form required under this subsection must include a
2 place for the signatures of the patient or the individual given
3 authority to consent to organ donation and the representative
4 of the organ procurement agency and space to provide the date
5 that the form was signed.

6 (Source: P.A. 95-331, eff. 8-21-07.)

7 (755 ILCS 50/5-35) (was 755 ILCS 50/6)

8 Sec. 5-35. Delivery of Document of Anatomical Gift Not
9 Required; Right to Examine.

10 (a) A document of gift need not be delivered during the
11 donor's lifetime to be effective.

12 (b) Upon or after an individual's death, a person in
13 possession of a document of gift or a refusal to make an
14 anatomical gift with respect to the individual shall allow
15 examination and copying of the document of gift or refusal by a
16 person authorized to make or object to the making of an
17 anatomical gift with respect to the individual or by a person
18 to which the gift could pass under Section 5-12 of this Act.

19 ~~If the gift is made by the donor to a specified donee, the~~
20 ~~will, card, or other document, or an executed copy thereof, may~~
21 ~~be delivered to the donee to expedite the appropriate~~
22 ~~procedures immediately after death. Delivery is not necessary~~
23 ~~to the validity of the gift. The will, card, or other document,~~
24 ~~or an executed copy thereof, may be deposited in any hospital,~~
25 ~~bank or storage facility, or registry office that accepts it~~

1 ~~for safekeeping or for facilitation of procedures after death.~~
2 ~~On request of any interested party upon or after the donor's~~
3 ~~death, the person in possession shall produce the document for~~
4 ~~examination.~~

5 (Source: P.A. 93-794, eff. 7-22-04.)

6 (755 ILCS 50/5-42 new)

7 Sec. 5-42. Amending or revoking anatomical gift before
8 donor's death.

9 (a) Subject to Section 5-7 of this Act, a donor or other
10 person authorized to make an anatomical gift under subsection
11 (a) of Section 5-5 of this Act may amend or revoke an
12 anatomical gift by:

13 (1) a record signed by:

14 (A) the donor;

15 (B) the other authorized person; or

16 (C) subject to subsection (b) of this Section,
17 another individual acting at the direction of the donor
18 or the other person if the donor or other person is
19 physically unable to sign; or

20 (2) a later-executed document of gift that amends or
21 revokes a previous anatomical gift or portion of an
22 anatomical gift, either expressly or by inconsistency.

23 (b) A record signed under subdivision (a)(1)(C) of this
24 Section must:

25 (1) be witnessed by at least 2 adults, at least one of

1 whom is a disinterested witness, who have signed at the
2 request of the donor or the other person; and

3 (2) state that it has been signed and witnessed as
4 provided in paragraph (1) of this subsection (b).

5 (c) Subject to Section 5-7 of this Act, a donor or other
6 person authorized to make an anatomical gift under subsection
7 (a) of Section 5-5 of this Act may revoke an anatomical gift by
8 the destruction or cancellation of the document of gift, or the
9 portion of the document of gift used to make the gift, with the
10 intent to revoke the gift.

11 (d) A donor may amend or revoke an anatomical gift that was
12 not made in a will by any form of communication during a
13 terminal illness or injury addressed to at least 2 adults, at
14 least one of whom is a disinterested witness.

15 (e) A donor who makes an anatomical gift in a will may
16 amend or revoke the gift in the manner provided for amendment
17 or revocation of wills or as provided in subsection (a) of this
18 Section.

19 (755 ILCS 50/5-43 new)

20 Sec. 5-43. Refusal to make anatomical gift; effect of
21 refusal.

22 (a) An individual may refuse to make an anatomical gift of
23 the individual's body or part by:

24 (1) a record signed by:

25 (A) the individual; or

1 (B) subject to subsection (b) of this Section,
2 another individual acting at the direction of the
3 individual if the individual is physically unable to
4 sign;

5 (2) the individual's will, whether or not the will is
6 admitted to probate or invalidated after the individual's
7 death; or

8 (3) any form of communication made by the individual
9 during the individual's terminal illness or injury
10 addressed to at least 2 adults, at least one of whom is a
11 disinterested witness.

12 (b) A record signed under subdivision (a)(1)(B) of this
13 Section must:

14 (1) be witnessed by at least 2 adults, at least one of
15 whom is a disinterested witness, who have signed at the
16 request of the individual; and

17 (2) state that it has been signed and witnessed as
18 provided in paragraph (1) of this subsection (b).

19 (c) An individual who has made a refusal may amend or
20 revoke the refusal:

21 (1) in the manner provided in subsection (a) of this
22 Section for making a refusal;

23 (2) by subsequently making an anatomical gift under
24 subsection (a), (b), (b-5) or (b-10) of Section 5-20 of this
25 Act that is inconsistent with the refusal; or

26 (3) by destroying or canceling the record evidencing

1 the refusal, or the portion of the record used to make the
2 refusal, with the intent to revoke the refusal.

3 (d) In the absence of an express, contrary indication by
4 the individual set forth in the refusal, an individual's
5 unrevoked refusal to make an anatomical gift of the
6 individual's body or part bars all other persons from making an
7 anatomical gift of the individual's body or part.

8 (755 ILCS 50/5-45) (was 755 ILCS 50/8)

9 Sec. 5-45. Rights and Duties at Death.

10 (a) The donee may accept or reject the anatomical gift. If
11 the donee accepts a gift of the entire body, he may, subject to
12 the terms of the gift, authorize embalming and the use of the
13 body in funeral services, unless a person named in subsection
14 (b) of Section 5-5 has requested, prior to the final
15 disposition by the donee, that the remains of said body be
16 returned to his or her custody for the purpose of final
17 disposition. Such request shall be honored by the donee if the
18 terms of the gift are silent on how final disposition is to
19 take place. If the gift is of a part of the body, the donee or
20 technician designated by him upon the death of the donor and
21 prior to embalming, shall cause the part to be removed without
22 unnecessary mutilation and without undue delay in the release
23 of the body for the purposes of final disposition. After
24 removal of the part, custody of the remainder of the body vests
25 in the surviving spouse, next of kin, or other persons under

1 obligation to dispose of the body, in the order or priority
2 listed in subsection (b) of Section 5-5 of this Act.

3 (b) The time of death shall be determined by a physician
4 who attends the donor at his death, or, if none, the physician
5 who certifies the death. The physician shall not participate in
6 the procedures for removing or transplanting a part.

7 (c) A person who acts or attempts in good faith to act in
8 accordance with this Act or with the applicable anatomical gift
9 law of another state is not liable for the act in a civil
10 action, criminal prosecution, or administrative proceeding.
11 Neither the person making an anatomical gift nor the donor's
12 estate is liable for any injury or damage that results from the
13 making or use of the gift. In determining whether an anatomical
14 gift has been made, amended, or revoked under this Act, a
15 person may rely upon representations of an individual listed in
16 items (2), (3), (4), (5), (6), (7), or (8) of subsection (b) of
17 Section 5-5 of this Act relating to the individual's
18 relationship to the donor or prospective donor unless the
19 person knows that the representation is untrue. A person who
20 acts in good faith in accord with the terms of this Act, the
21 Illinois Vehicle Code, and the AIDS Confidentiality Act, or the
22 anatomical gift laws of another state or a foreign country, is
23 not liable for damages in any civil action or subject to
24 prosecution in any criminal proceeding for his act. Any person
25 that participates in good faith and according to the usual and
26 customary standards of medical practice in the preservation,

1 ~~removal, or transplantation of any part of a decedent's body~~
2 ~~pursuant to an anatomical gift made by the decedent under~~
3 ~~Section 5-20 of this Act or pursuant to an anatomical gift made~~
4 ~~by an individual as authorized by subsection (b) of Section 5-5~~
5 ~~of this Act shall have immunity from liability, civil,~~
6 ~~criminal, or otherwise, that might result by reason of such~~
7 ~~actions. For the purpose of any proceedings, civil or criminal,~~
8 ~~the validity of an anatomical gift executed pursuant to Section~~
9 ~~5-20 of this Act shall be presumed and the good faith of any~~
10 ~~person participating in the removal or transplantation of any~~
11 ~~part of a decedent's body pursuant to an anatomical gift made~~
12 ~~by the decedent or by another individual authorized by the Act~~
13 ~~shall be presumed.~~

14 (d) This Act is subject to the provisions of "An Act to
15 revise the law in relation to coroners", approved February 6,
16 1874, as now or hereafter amended, to the laws of this State
17 prescribing powers and duties with respect to autopsies, and to
18 the statutes, rules, and regulations of this State with respect
19 to the transportation and disposition of deceased human bodies.

20 (e) If the donee is provided information, or determines
21 through independent examination, that there is evidence that
22 the anatomical gift was exposed to the human immunodeficiency
23 virus (HIV) or any other identified causative agent of acquired
24 immunodeficiency syndrome (AIDS), the donee may reject the gift
25 and shall treat the information and examination results as a
26 confidential medical record; the donee may disclose only the

1 results confirming HIV exposure, and only to the physician of
2 the deceased donor. The donor's physician shall determine
3 whether the person who executed the gift should be notified of
4 the confirmed positive test result.

5 (Source: P.A. 93-794, eff. 7-22-04; 94-75, eff. 1-1-06; 94-920,
6 eff. 1-1-07.)

7 (755 ILCS 50/5-47 new)

8 Sec. 5-47. Rights and duties of procurement organizations
9 and others.

10 (a) When a hospital refers an individual at or near death
11 to a procurement organization, the organization shall make a
12 reasonable search of the records of the Secretary of State and
13 any donor registry that it knows exists for the geographical
14 area in which the individual resides to ascertain whether the
15 individual has made an anatomical gift.

16 (b) A procurement organization shall be allowed reasonable
17 access to information in the records of the Secretary of State
18 to ascertain whether an individual at or near death is a donor.

19 (c) When a hospital refers an individual at or near death
20 to a procurement organization, the organization may conduct any
21 reasonable examination necessary to ensure the medical
22 suitability of a part from a donor or a prospective donor that
23 is or could be the subject of an anatomical gift for
24 transplantation, therapy, research, or education. During the
25 examination period, measures necessary to ensure the medical

1 suitability of the part may not be withdrawn unless the
2 hospital or procurement organization knows that the individual
3 expressed a contrary intent.

4 (d) Unless prohibited by law other than this Act, at any
5 time after a donor's death, the person to which a part passes
6 under Section 5-12 of this Act may conduct any reasonable
7 examination necessary to ensure the medical suitability of the
8 body or part for its intended purpose.

9 (e) Unless prohibited by law other than this Act, an
10 examination under subsection (c) or (d) of this Section may
11 include an examination of all medical and dental records of the
12 donor or prospective donor.

13 (f) Upon referral by a hospital under subsection (a) of
14 this Section, a procurement organization shall make a
15 reasonable search for any person listed in subsection (b) of
16 Section 5-5 of this Act having priority to make an anatomical
17 gift on behalf of a prospective donor. If a procurement
18 organization receives information that an anatomical gift to
19 any other person was made, amended, or revoked, it shall
20 promptly advise the other person of all relevant information.

21 (g) Subject to subsection (i) of Section 5-12 of this Act,
22 the rights of the person to which a part passes under Section
23 5-12 of this Act are superior to the rights of all others with
24 respect to the part. The person may accept or reject an
25 anatomical gift in whole or in part. Subject to the terms of
26 the document of gift and this Act, a person who accepts an

1 anatomical gift of an entire body may allow embalming, burial
2 or cremation, and use of remains in a funeral service. If the
3 gift is of a part, the person to which the part passes under
4 Section 5-12 of this Act, upon the death of the donor and
5 before embalming, burial, or cremation, shall cause the part to
6 be removed without unnecessary mutilation.

7 (h) Neither the physician who attends the decedent at death
8 nor the physician who determines the time of the decedent's
9 death may participate in the procedures for removing or
10 transplanting a part from the decedent.

11 (i) A physician or technician may remove a donated part
12 from the body of a donor that the physician or technician is
13 qualified to remove.

14 (755 ILCS 50/5-50) (was 755 ILCS 50/8.1)

15 Sec. 5-50. Payment for anatomical gift.

16 (a) Except as provided in subsection (b), any person who
17 knowingly pays or offers to pay any financial consideration to
18 a donor or to any of the persons listed in subsection (b) of
19 Section 5-5 for making or consenting to an anatomical gift
20 shall be guilty of a Class A misdemeanor for the first
21 conviction and a Class 4 felony for subsequent convictions.

22 (b) This Section does not prohibit reimbursement for
23 reasonable costs associated with the removal, processing,
24 preservation, quality control, storage, transportation,
25 implantation, or disposal ~~removal, storage or transportation~~

1 of a human body or part thereof pursuant to an anatomical gift
2 executed pursuant to this Act.

3 (Source: P.A. 93-794, eff. 7-22-04.)

4 (755 ILCS 50/5-55 new)

5 Sec. 5-55. Law governing validity; choice of law as to the
6 execution of document of anatomical gift; presumption of
7 validity.

8 (a) A document of gift is valid if executed in accordance
9 with:

10 (1) this Act;

11 (2) the laws of the state or country where it was
12 executed; or

13 (3) the laws of the state or country where the person
14 making the anatomical gift was domiciled, had a place of
15 residence, or was a national at the time the document of
16 gift was executed.

17 (b) If a document of gift is valid under this Section, the
18 law of this State governs the interpretation of the document of
19 gift.

20 (c) A person may presume that a document of gift or
21 amendment of an anatomical gift is valid unless that person
22 knows that it was not validly executed or was revoked.

23 (755 ILCS 50/5-10 rep.)

24 (755 ILCS 50/5-30 rep.)

1 (755 ILCS 50/5-40 rep.)

2 Section 10. The Illinois Anatomical Gift Act is amended by
3 repealing Sections 5-10, 5-30, and 5-40."